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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/502,377	02/11/2000	Martin Tobias	53326-019	5044

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HICKMAN PALMERO TRUONG & BECKER LLP  
1600 Willow Street  
San Jose, CA 95125-5106

EXAMINER

NGUYEN, THU HA T

ART UNIT PAPER NUMBER

2155

DATE MAILED: 07/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/502,377

Applicant(s)

TOBIAS ET AL.

Examiner

Thu Ha T. Nguyen

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on June 10, 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-23.

Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

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HOSAIN ALAM  
SUPERVISORY PATENT EXAMINER

**Attached to Advisory Action**

1. Applicant's arguments filed on June 10, 2004 have been fully considered but they are not persuasive because of the following reasons:

2. Applicants argue that Willis does not teach or suggest "receiving from a network client that is connected to the network a request..." and "...capturing the one or more traditional media source programs from a traditional media resource that broadcasts the one or more traditional media source programs at a particular broadcast time". In response to Applicants' argument, Office Patent asserts that Willis does teach "receiving from a network client that is connected to the network a request..." and "...capturing the one or more traditional media source programs from a traditional media resource that broadcasts the one or more traditional media source programs at a particular broadcast time" as shown in abstract, figures 1-4, col. 3 lines 4-44, col. 8 lines 56-col. 9 lines 26, col. 10 lines 12-col. 11 lines 4. Abstract incorporates with figure 6, col. 11, lines 5-42 that disclose subscriber sends a request for information or action to gateway server, the gateway server, in response to request, sends data stream and data files to file gateways based on scheduling service according to the subscriber and the data (such as address, ID, timing/scheduling, checksum and format information) in the data stream and data file accordingly. Data stream and data file then send to receiving gateway (i.e., downlink gateway 650) and before multicast to subscriber, data stream and data file are decoded and captured based on the scheduling service according to the subscriber and the data. In conclusion, Willis teaches when the client request for data and only that data is captured and transmitted to client.

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3. As a result, cited prior arts do disclose a system and method for automatically recording and publishing traditional media source programs over a network, as broadly claimed by the Applicants. Applicants clearly have still failed to identify specific claim limitations that would define a clearly patentable distinction over prior art.

4. Therefore, the Patent Office concludes that cited prior art teaches or suggests the subject matter broadly recited in independent claims 1, 12 and 23. Claims 2-11 and 13-22 are also rejected at least by virtue of their dependency on independent claims.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Ha Nguyen, whose telephone number is (703) 305-7447. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SPE Hosain T. Alam, can be reached at (703) 308-6662.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications.

Thu Ha Nguyen

July 19, 2004

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